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March 27, 1958

MEMORANDUM FOR: THE DIRECTOR

SUBJECT : References relating to Disclosures of
Classified Information

1. When we were discussing Paragraph 17, NSCID #1, dealing with your statutory responsibility for protection of intelligence sources and methods, you asked me to obtain the references which deal with other disclosures of classified information and such government leaks.

2. Attached hereto is a summary prepared by the Office of General Counsel at my request which lists the various references. This was prepared by [] of the General Counsel's Office. He informs me that he checked this list out with associates in the Department of Justice. I believe this will serve your purpose.

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L. K. TRUSCOTT, JR.
General, USA (Ret.)
Deputy Director (Coordination)

Attachment

cc: DDCI

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The following are citations of the United States Code Annotated pertaining to laws governing disclosure of classified information. Title 18 is the criminal section of the Code and investigations under its provisions are the responsibility of the Federal Bureau of Investigation, Department of Justice.

Title 18 U.S.C.A., Section 791-798:

These relate to espionage and censorship and the protection of defense information.

Section 791: Applies to the admiralty and maritime jurisdiction of the United States as well as on the high seas.

Section 792: Harboring or concealing any person known or suspected to have committed an offense under Section 793 or 794.

Section 793: Gathering, transmitting or losing defense information with intent or reason to believe it is to be used to the injury of the United States or for the benefit or use of a foreign nation. Also included are willful refusal to turn over national defense information on proper demand and loss of such information through gross negligence. Conspiracy or attempts re the foregoing are punishable. No distinction is made between war and peacetime espionage under this section.

Section 794: Gathering or delivering defense information for use of a foreign government. Death sentence is provided in time of war.

Section 795: Photographing and sketching defense installations determined by the President to require protection against general dissemination.

Section 796: Punishes use of aircraft for photographing defense installations.

Section 797: Punishes publication sale or gift of photographs of defense information.

Section 798: This section punishes the unauthorized communication or use in any manner prejudicial to the United States of any information concerning the foregoing which has been properly classified for reasons of national security.

These statutes pertain to any person and are not limited to Government employees.

Title 18 U.S.C.A., Section 2071 and Section 641:

Section 2071 of title 18 defines and punishes the concealment, removal, or mutilation of Government documents, papers, and records; and section 641 of title 18 punishes any individual who embezzles, steals, purloins, or knowingly converts any money, property, records, or anything of value belonging to the United States or any department or agency thereof. These are very broad; pertain to any person and are not limited to classified information.

or employee of the Government of what is generally termed "confidential information" and punishes anyone who "publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; . . ." This language is very broad and no official classification need be attached to the information in question. However, this does not exclude the fact that it could involve information relating to the national defense.

Title 18 U.S.C.A., Section 952:

This section provides punishment for the unauthorized disclosure or transmittal of any code or coded matter by anyone who by virtue of Government employment has custody of or access to the diplomatic code.

Title 50 U.S.C.A., Section 783(b):

This is part of the "Subversive Activities Act of 1950" and punishes the unauthorized disclosure of "classified information" by an officer or employee of the Government to any person whom such officer or employee has reason to believe is a member of a Communist organization or represents a foreign government. This statute deals directly with information affecting national defense which has been officially classified by the proper governmental agency for reasons of national security. The Federal Bureau of Investigation has investigative jurisdiction.

Title 42 U.S.C.A., Section 2271:

This section applies to any person and relates to the enforcement of security provisions with respect to the Atomic Energy Commission. It directs the Federal Bureau of Investigation to investigate all alleged or suspected criminal violations. However, the President is given the authority to utilize the services of any Government agency in protecting against unlawful dissemination of atomic data.

Title 5 U.S.C.A., Section 139b:

This is contained in the "Federal Reports Act of 1942" and provides that in the event any information obtained in confidence by a Federal agency is released by that agency to another Federal agency, all the provisions of law (including penalties) relating to the unlawful disclosure of any such information shall apply to the officers and employees of both agencies.

Title 5 U.S.C.A., Section 311a:

This statute states that "Notwithstanding any other provision of law, and without limiting the authority to investigate any matter which may have been or may hereafter be conferred upon them, or upon any other department or agency of the Government, the Attorney General and the Federal Bureau of Investigation shall have authority to investigate any violation of Title 18, involving Government officers and employees. . . ." Any information concerning said violations involving any employee shall be expeditiously reported to the Attorney General

unless authority to investigate is specifically assigned by another provision of law or unless the Attorney General otherwise directs.

Executive Order No. 10501:

This relates to the safeguarding of official information in the interest of the defense of the United States. It provides for the categories of classification and assigns duties in question therewith to certain Government departments and agencies. It provides that nothing in the Order shall be construed to authorize the dissemination, handling, or transmittal of classified information contrary to the provisions of any statute.

Commission on Government Security, Honorable Lloyd Wright, Chairman:

It may be of interest to quote the following from page 620 of the Commission's report, dated 21 June 1957:

"The Commission recommends that Congress enact legislation making it a crime for any person willfully to disclose without proper authorization, for any purpose whatever, information classified 'secret' or 'top secret', knowing, or having reasonable grounds to believe, such information to have been so classified.

"The Commission believes that such a legislative enactment would act as a genuine deterrent to those who, without giving serious thought to the overall security picture but without pernicious or subversive intent, deliberately compromise vital defense information for the sake of publicity or for any commercial or other purpose."

Proposed Wording, Paragraph 17, NSCID No. 1

The Director of Central Intelligence shall, in consultation with members of the Intelligence Advisory Committee and with other appropriate offices, ensure the development of policies, procedures, and practices for the protection of intelligence sources and methods from unauthorized disclosure. Each department and agency shall be responsible for the protection of intelligence sources and methods within its ^{organization} own area of responsibility. The Director of Central Intelligence shall call upon the departments and agencies, as appropriate, to investigate ^{within their dept or agency} any unauthorized disclosure of intelligence sources or methods.

[Extract from the Hull Board's recommendation to the NSC (page 2):

"With regard to Par. 17 the Board is increasingly concerned over the repeated serious leaks of intelligence recently brought to its attention. To insure that such disclosures do not continue to occur, the Board believes that better control of sensitive material would be achieved if the responsibility for the protection of intelligence sources and methods from unauthorized disclosure together with the authority to discharge this responsibility were fixed somewhat more explicitly than they now appear to be in this paragraph or in the present NSCID #11."

[Extract from NSC Action No. 1873, paragraph c. (1):

"In draft NSCID No. 1, paragraph 17 should be modified to authorize the Director of Central Intelligence to direct the heads of the intelligence agencies, as appropriate, to investigate any unauthorized disclosure of intelligence sources and methods."